IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13835 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAVARKUNDLA TAL.SAHKARI KHARIDVECHAN SANGH LTD.

Versus

STATE OF GUAJRAT MR.AVINASH KUMAR IAS

Appearance:

MR BM MANGUKIYA for Petitioner No. 1-2

MRS MANISHA SHAH, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 17/12/2004

ORAL JUDGEMENT

1. The petitioners herein have prayed for a declaration that the State has no occasion to exercise powers conferred upon it under section 80 of the Act to nominate 3 nominees on the Board of Directors of the petitioner no.1 society.

2. In the present case no notice has been issued to the petitioners to show cause as to why the Government nominees should not be appointed.

3. Heard the learned counsel for the respective parties.

4. The issue raised in the present petition is squarely covered by a decision of the Division Bench of this Court in the case of G.S.M. Coop. Federation Ltd. Vs. State, reported in 2004(3) GLR 2342, wherein it is held as under:

"10(f) The appointment of representatives on the committee of a society by nomination under the provisions of Section 80(2) has civil consequences, and, therefore, the principles of natural justice are required to be observed while forming the opinion that, having regard to the public interest involved in the operation of the society, it is necessary or expedient to nominate the representatives. For compliance with the principles of natural justice, adequate and meaningful opportunity of hearing has to be given to the society and, as a part thereof, the society has to be informed about the grounds on which the opinion as to involvement of public interest in the operation of the society was based and the necessity or expediency for the nomination had arisen. The guidelines evolved and issued in compliance with the observation in paragraph 79 of the judgement in AMRELI DISTRICT CO.OP. SALE & PURCHASE UNION LTD. (supra) are also required to be followed while exercising the power and the exercise of power has to be consistent with such guidelines; and"

11(d) In Special Civil Application Nos.11860 of 2000 and 201 of 2000, the show cause notices and the impugned orders made in the exercise of the powers under section 80(2) are found to be inconsistent with the legal propositions summarised hereinabove.

In Special Civil Application No.11860 of 2000, no reply to the amended petition is filed and hence the allegations made against the legality of the impugned order appointing three representatives remain uncontroverted. The impugned order is found and held to be clearly in violation of the

principles of natural justice and hence quashed. Rule is accordingly made absolute and Civil Application No.12036 of 2000 filed therein for interim relief is disposed of as not surviving and rejected.

In Special Civil Application No.201 of 2000 also,

the allegations made to challenge the impugned order appointing three representatives are not denied by the respondent by filing any reply and the impugned order does not disclose the necessity or expediency of appointment of nominees of the State. The petition is, therefore, allowed and the impugned order dated 30.11.1999 at Annexure-A is quashed. Rule is made absolute accordingly."

5. Learned counsel for the respondent-State is not in a position to dispute the above position in law and the applicability of the same to the facts of the present case.

6. In the premises aforesaid, since no notice has been issued to the petitioner as stated above, it is held and declared that the respondents shall not nominate State nominees on the Board of Directors of the petitioner no.1 society without following the proper procedure and also the ratio laid down in the case of G.S.M. Coop. Fed. Ltd. (supra). Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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